HIGH COURT OF UTTARANCHAL AT NAINTIAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32(2)(b)

Description of the case.

W.P. No. 1035 of 2003 (S/S)
(Old No. 3087 of 1996)

Smt. Sangeeta Bisht

Vs.

State of U.P. & others

Approved for reporting

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Not approved for reporting

Date of decision 17.5.2005

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1035 (S/S) OF 2003
(Old No. 3087 of 1996)

Smt. Sangeeta Bisht aged about 32 years, wife of Sri M.C. Bisht, C/o Jagdish Chandra Tripathi, resident of and Post Garam Pani, Nainital. .....Petitioner.

Versus

1. State of U.P., through the Secretary, Uttaranchal/Hill Development Department, Government of U.P., Civil Secretariat, Lucknow.
2. Vishesh Karya Adhikari/Joint Secretary, U.P. Government Uttaranchal/Vikas, Regional Office, Kumaon Region, Almora.

.....Respondents.

Dated: 17.05.2005

Hon'ble Rajesh Tandon, J.

Heard learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order of the termination if any by summoning the original and further prayed for a writ of mandamus commanding the respondents to pay the petitioner's salary with effect from 1st October, 1992 and directing the respondents to pay the petitioner's monthly salary and to allow her to continue in service. Further the petitioner has prayed to restrain the respondents from terminating the services of the petitioner in any manner and regularize the services of the petitioner on the available, clear and substantive vacancies of Junior Investigator.

Briefly stated the petitioner was found suitable for the post of Investigator which was lying vacant and a letter was issued by Regional Employment Office Almora. To this effect an information was sent and petitioner was called for an

interview and after facing the interview she was offered a job in the nature of Gramin Arthik Samajik Evam Sanskritik Surveykshan Regional Office of Kumaon Region Hill Development Department at Almora vide order NO. 189/Kumaon Regional Ka.Aa.-97/1990 issued on 25 Nov. 1990 and joined on the said post on 11th January, 1991. It was an appointment against a clear permanent vacancy of Junior Investigator (Pay-scale 1200-2040) in the services Hill Development Department Government of Uttar Pradesh. Petitioner was a Post Graduate and according to her qualification she should have been appointed as Junior Investigator by the respondent, but she was appointed as a daily-wager to work as a Surveyor on a fixed salary of Rs. 1000/- per month and it was provided in the appointment order that if the number of villages surveyed by the petitioner remains less than ten she will not be paid any salary and if it remains with 10 to 12 villages she will be paid only Rs.500/- per month. Petitioner is continuously working on the said post from 1991.

Petitioner made an application to Special Secretary for making her appointment on ad-hoc basis/Daily wager in the office of Regional Office Almora against the post of Junior Investigator along with petitioner Diwan Singh Nagarkoti, Chandra Shekhar Tewari and M.S. Rawat had also made an applications whereupon vide letter NO. 10 Sep. 1991 comments were asked in relation to the petitioner's applications by Special Secretary Govt. of Uttar Pradesh comment was sent to Special Secretary Hill Development Department Administrative Cell Uttar Pradesh Lucknow by Kumaon Area Office Hill Development Department Almora vide letter No. Oct., 1991 and thereafter vide Order No. 3576/28 Administrative Cell 1

(146)/91 dated 1st November, 1991, whereby the petitioner joined on 2nd November,1991 against the said post, thereafter the services of the petitioner were extended for another six months till 30th September, 1992.

Petitioner was assured by the Authorities concerned that after getting an approval for the same post form the Government of Uttar Pradesh, she will be paid salary. The work was being taken by the petitioner, but the salary was not being paid. She worked more than a year and was assured form time to time by the respondents that when sanction will be obtained she will be paid salary.

Petitioner made a representation before Opp. Party No. 2 to pay her salary but no orders were passed upon her representations. It has been submitted by the learned counsel for the petitioner that the post was never abolished and sanction was made by the Govt. of Uttar Pradesh from time to time. Against her excellency, the Government of Uttar Pradesh sanctioned a post in continuation of order dated 17th December, 1988. Again the government of U.P. pleased to sanction the aforesaid post for a period of another six months, which expired on 28th August , 1995 and requisition for extension of another six months was again sent by the respondents the same was further sanctioned.

It has been submitted that regular selection against these posts have yet not been taken neither regularly selected candidates are available nor regular selection have been made. Petitioner is working for more than three year and without any rhyme and reason petitioner has been restrained to perform the duties with effect form January 15, 1996 and against these illegal and arbitrary action of the opposite party, petitioner moved a representation and requested therein to allow to

continue the petitioner to work on the post of Junior Investigator and to pay her salary w.e.f. October, 1992 up to December, 1994, in which period work was being taken from the petitioner but the salary was not paid. It has also been submitted that in the meantime one Rajendra Prasad, Guru Rani and Chandra Singh Garia and Bhuwan Chandra Sanwal were also restrained to perform the duties. They preferred writ petition before this Court and this Hon'ble Court was pleased to pass an ad interim order.

The Petitioner kept sending representation to the Government for regularization of her services on the post of Junior Investigator. The petitioner's work, conduct and performance was excellent. The vacancies are available and finances are available to pay the salary for all the posts shown in the Annexure No. 1 to the writ petition but there are permanent clear vacancies despite petitioner's more than three years' continuous services. She was not regularized nor she was allowed to continue to work w.e.f. 15th January 1996.

Learned counsel for the petitioner has submitted that there are specific direction, circulars and government orders for regularizing the services of the employees, who are working on clear vacancies on 04.02.1993 and the government has directed to fill the vacancies which are still available in the Hill Development Department vide G.O. dated 08.04.1992. The vacancies are still lying vacant, where the petitioner could be accommodated inspite of paying consolidated pay that too has been refused to pay since 1st October, 1992.

The grievance of the petitioner is that she has not been paid her salary w.e.f 1st October, 1991 although work was taken up to 31st December 1995. She was restrained to come on duty

w.e.f. 15.01.1996. The work and post are still available. The financial grants, the budget grants are available.

Petitioner has submitted that neither her services have been regularized nor she has been paid her salary. Her services were only terminated.

In view of the above, respondents are directed to consider the petitioner to continue on the post of Junior Investigator and also consider for representation in accordance with rules concerning Group-C Post.

Subsequently, writ petition is allowed.

(Rajesh Tandon, J.)

Dated: 17.05.2005
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